

BEFORE THE  
TENNESSEE STATE BOARD OF EQUALIZATION

*In Re:*        G. Denny & Joan E. Markwell                                )  
                 District 6, Map 33I, Group A, Control Map 32L,        )        Montgomery County  
                 Parcel 5, Special Interest 000                                )  
                 Tax year 2006    )

INITIAL DECISION AND ORDER

Statement of the Case

The Montgomery County Assessor of Property ("Assessor") valued the subject property for tax purposes as follows:

LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
\$267,700	\$190,500	\$460,200	\$184,080

On June 29, 2006, the property owners filed an appeal with the State Board of Equalization ("State Board"). The property in question was not appealed to the Montgomery County Board of Equalization ("county board") during its regular annual session.

On December 21, 2006, the undersigned administrative judge conducted a hearing in Clarksville that was limited to the preliminary issue of whether the State Board has jurisdiction in this matter. In attendance at the hearing were Joan Markwell, co-owner of the subject property; Assessor Ronnie Boyd; and Deputy Assessor Robert Hunt.

Findings of Fact and Conclusions of Law

This appeal stems from a "current value updating" (CVU) of real property values in Montgomery County that was mandated by provisions of Tenn. Code Ann. section 67-5-1601. As a result, the appraisal of the subject property – a restaurant located at 116 Morris Road in Clarksville – rose from \$290,400 to \$460,200.<sup>1</sup> The appellants, who live in Lawrenceburg, Kentucky, have owned this property since 1996.

On April 13, 2006, the Assessor's office mailed notice of the increased assessment of the subject property to the owners at their home address. This notice apprised the taxpayers of their opportunity to discuss the revaluation with personnel of the State Division of Property Assessments (DPA) later in the month. Also imprinted on the assessment change was the following information:

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<sup>1</sup>Some improvements to the structure were apparently made by the property owners since the last county-wide reappraisal in 2003.

APPEAL OF THESE VALUES MAY BE MADE TO THE LOCAL  
BOARD OF EQUALIZATION BEGINNING JUNE 1.

On May 19, 2006, in accordance with Tenn. Code Ann. section 67-5-508(a)(2), the Assessor caused to be published in the *Clarksville Leaf-Chronicle* (a local newspaper of general circulation) a notice stating that:

The (county board) will meet June 1, 2006 through June 14, 2006 each weekday from 8 a.m. – 12 p.m. and 1 p.m. – 3:00 p.m. in the Assessor of Property's office: **350 Pageant Lane Suite 101-C**. Appointments should be made by calling **648-5709** beginning May 19 through June 8, 2006...[Emphasis original.]

Unfortunately, not having seen this newspaper notice, Ms. Markwell waited until after the county board had adjourned its regular session to contact the Assessor's office about the allegedly excessive assessment of the subject property. With that avenue foreclosed, she and Mr. Markwell initiated this appeal to the State Board.

Tenn. Code Ann. section 67-5-1401 provides (in relevant part) that:

If the taxpayer fails, neglects or refuses to appear before the county board of equalization prior to its final adjournment, the assessment as determined by the assessor shall be conclusive against the taxpayer, and such taxpayer shall be required to pay the taxes on such amount....

See also Tenn. Code Ann. section 67-5-1412(b)(1).

In 1991, however, the General Assembly enacted an amendment which affords a taxpayer the opportunity for a hearing to demonstrate "reasonable cause" for failure to appeal an assessment to the local board of equalization within the allotted time. The State Board may accept a direct appeal upon a showing of reasonable cause up to March 1 of the year following the tax year in controversy. Tenn. Code Ann. section 67-5-1412(e).

The Assessment Appeals Commission, appointed by the State Board under authority of Tenn. Code Ann. section 67-5-1502, has declared that:

The deadlines and requirements for appeal are clearly set out in the law, and owners of property are charged with knowledge of them. It was not the intent of the "reasonable cause" provisions to waive these requirements except where the failure to meet them is due to **illness or other circumstance beyond the taxpayer's control**....

Associated Pipeline Contractors, Inc. (Williamson County, Tax Year 1992, Final Decision and Order, August 11, 1994), pp. 2—3.

The property owners admittedly received the aforementioned assessment change notice well in advance of the county board's regular session. According to Ms. Markwell's testimony,



she had misunderstood the words “beginning June 1” in the notice to mean that the county board would accept appeals long thereafter.<sup>2</sup>

That out-of-state residents like the appellants would not have been aware of the published notice which *did* specify the deadline for appeal to the county board is certainly understandable. But as the administrative judge has previously observed, the legal notices required by Tenn. Code Ann. section 67-5-508(a)(2) “would serve little purpose if only those persons who actually read them were chargeable with knowledge of their contents.” Century VII, Inc. (Franklin County, Tax Years 1998 & 1999, Initial Decision and Order, June 6, 2000), p. 4. See *also* Flat Iron Partners, LP (Tipton County, Tax Year 2005, Final Decision and Order, October 17, 2006). Nonresidents of Tennessee are surely entitled to no special preference or treatment with respect to the statutory “deadlines and requirements for appeal” referred to in *Associated Pipeline Contractors*.

Clearly, no “circumstance beyond the taxpayer’s control” precluded a timely appeal to the county board in this instance.

#### Order

It is, therefore, ORDERED that this appeal be dismissed for lack of jurisdiction.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal “**must be filed within thirty (30) days from the date the initial decision is sent.**” Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal “**identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order**”; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

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<sup>2</sup>The duration of a county board’s regular session is limited to a certain number of days, depending on the county’s population. See Tenn. Code Ann. section 67-1-404.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 22<sup>nd</sup> day of January, 2007.

*Pete Loesch*

PETE LOESCH  
ADMINISTRATIVE JUDGE  
TENNESSEE DEPARTMENT OF STATE  
ADMINISTRATIVE PROCEDURES DIVISION

cc: Joan Markwell  
Ronnie D. Boyd, Montgomery County Assessor of Property

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